

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES BENTON BARNES,

Plaintiff,

v.

SBU,

Defendant.

CASE NO. 3:20-cv-06086-TSZ-JRC

ORDER TO SHOW CAUSE

This matter is before the Court on plaintiff's application to proceed *in forma pauperis* ("IFP") and proposed complaint. Dkts. 1, 4.

Under 28 U.S.C. § 1915A, the Court must screen the proposed complaint to determine whether it should be dismissed for, among other things, failing to state a claim upon which relief can be granted or seeking monetary relief from a defendant who is immune from such relief. Here, plaintiff's proposed complaint is subject to dismissal for failure to state a claim upon which relief can be granted, as explained in this Order.



1 “subject[ing], or caus[ing] to be subjected” another person “to the deprivation of any rights,  
2 privileges, or immunities secured by the Constitution and the laws[.]”

3 Plaintiff’s proposed complaint is deficient in several respects, discussed below.

4 First, plaintiff has not provided sufficient factual allegations to identify a “person” who  
5 can be sued under 42 U.S.C. § 1983. Plaintiff names “SBU” as the only defendant—but it is  
6 unclear whether “SBU” is a part of the Department of Corrections or a private organization that  
7 works with the Department of Corrections. Plaintiff should be aware that the Department of  
8 Corrections is not generally subject to suit under § 1983 because a state agency is not a “person”  
9 for § 1983 purposes. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). And if plaintiff wishes to  
10 sue a private organization, plaintiff must explain how that organization is acting “under color of  
11 state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S.  
12 299, 326 (1941)).

13 Similarly, although plaintiff does not appear to name “Mrs. Brown” as a defendant, the  
14 Court presumes that plaintiff does, in fact, intend to bring claims against her. If plaintiff wishes  
15 to sue “Mrs. Brown” herself, plaintiff must name “Mrs. Brown” as a defendant and provide  
16 sufficient information from which the Court could identify and direct service on “Mrs. Brown.”

17 Plaintiff should also explain how “Mrs. Brown” was acting under color of state law—for  
18 instance, as an employee of the Department of Corrections. If “Mrs. Brown” is a state employee  
19 or official, plaintiff should be aware that she cannot be sued in her official capacity for damages  
20 under § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 n.24 (1997). *But*  
21 *see Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013) (allowing  
22 suits against state officials in their official capacities for *injunctive* relief). If Mrs. Brown is a  
23 state employee and plaintiff sues Mrs. Brown in her personal capacity, however, plaintiff may  
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1 bring suit for damages. In that circumstance, plaintiff must explain how Mrs. Brown “caused”  
2 the alleged constitutional deprivation within the meaning of § 1983. *See Preschooler II v. Clark*  
3 *Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588 F.2d  
4 740, 743 (9th Cir. 1978)) (“A person deprives another of a constitutional right, ‘within the  
5 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative act, or  
6 omits to perform an act which he is legally required to do that causes the deprivation of which  
7 complaint is made.”); *see also Tower v. Glover*, 467 U.S. 914, 920 (1984) (explaining when a  
8 private person is acting under color of state law).

9 Second, plaintiff must identify the constitutional violation(s) that plaintiff is alleging  
10 occurred. It is unclear to the Court what constitutional rights plaintiff believes were violated. If  
11 plaintiff seeks to bring a claim of cruel and unusual punishment, plaintiff must meet two  
12 requirements:

13 [A] prison official violates the Eighth Amendment only when two  
14 requirements are met. First, the deprivation alleged must be, objectively,  
15 ‘sufficiently serious[;]’ a prison official’s act or omission must result in the denial  
16 of ‘the minimal civilized measure of life’s necessities.’ . . .

17 The second requirement follows from the principle that ‘only the  
18 unnecessary and wanton infliction of pain implicates the Eighth Amendment.’ To  
19 violate the Cruel and Unusual Punishments Clause, a prison official must have a  
20 ‘sufficiently culpable state of mind.’

21 *Farmer v. Brennan*, 511 U.S. 834, 832 (1994) (citations omitted). Plaintiff should provide  
22 particularized factual allegations explaining how the named defendant(s) violated the applicable  
23 portion(s) of the U.S. Constitution or other relevant law.

24 Third, plaintiff cannot obtain the remedy of release from prison as a result of this lawsuit.  
Where a state court prisoner seeks release from prison, the prisoner must proceed by way of writ  
of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Plaintiff should be aware that

1 a writ of habeas corpus under 28 U.S.C. § 2254 is the means for challenging the validity of a  
2 conviction or sentence—but not a means of vindicating claims related to the conditions of  
3 confinement (for instance, that someone has inflicted cruel and unusual punishment).

## 4 **II. Conclusion and Directions to Clerk and Plaintiff**

5 Due to the deficiencies described above, unless plaintiff shows cause or amends the  
6 proposed complaint, the Court will recommend dismissal of the complaint without prejudice. If  
7 plaintiff intends to pursue a § 1983 civil rights action, plaintiff must file a *signed and dated*  
8 amended complaint and within the amended complaint, plaintiff must write a short, plain  
9 statement telling the Court: (1) each constitutional right that plaintiff believes was violated; (2)  
10 the name or names of the person or persons who violated the right; (3) exactly what each  
11 individual or entity did or failed to do; (4) how the action or inaction of each individual or entity  
12 is connected to the violation of plaintiff's constitutional rights; and (5) what specific injury  
13 plaintiff suffered because of the individuals' conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–  
14 72, 377 (1976); *see also Farmer v. Brennan*, 511 U.S. 825 (1994) (setting forth the elements of a  
15 claim for violation of the Eighth Amendment).

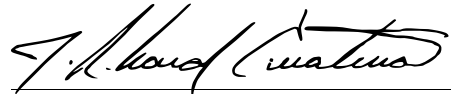
16 If plaintiff still wishes to pursue a § 1983 claim, then plaintiff shall present the amended  
17 complaint on the form provided by the Court. The amended complaint must be legibly written or  
18 typed in its entirety, it should be an original and not a copy, it should contain the same case  
19 number, and it may not incorporate any part of the original complaint by reference. The  
20 amended complaint will act as a complete substitute for the original complaint and not as a  
21 supplement. An amended complaint supersedes all previous complaints. *Forsyth v. Humana,*  
22 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on other grounds*, *Lacey v. Maricopa*  
23 *County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended complaint must be complete in  
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1 itself, and all facts and causes of action alleged in the original complaint that are not alleged in  
2 the amended complaint are waived. *Forsyth*, 114 F.3d at 1474. The Court will screen the  
3 amended complaint to determine whether it contains factual allegations linking each defendant to  
4 the alleged violations of plaintiff's rights.

5 If plaintiff fails to file an amended complaint or fails to adequately address the issues  
6 raised herein on or before **December 18, 2020**, the undersigned will recommend dismissal of this  
7 action without prejudice pursuant to 28 U.S.C. § 1915A.

8 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
9 civil rights complaint. The Clerk is further directed to send copies of this Order and Pro Se  
10 Instruction Sheet to plaintiff. And the Clerk's Office shall renote the motion to proceed *in forma*  
11 *pauperis* (Dkt. 4) for December 18, 2020.

12 Dated this 18th day of November, 2020.

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16 J. Richard Creatura  
17 United States Magistrate Judge  
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